

# NORTH CAROLINA GENERAL ASSEMBLY



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## ENVIRONMENTAL REVIEW COMMISSION

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**REPORT TO THE  
2016 SESSION  
of the  
2015 GENERAL ASSEMBLY**

APRIL 13, 2016

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## TRANSMITTAL LETTER

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April 13, 2016

TO THE MEMBERS OF THE 2016 REGULAR SESSION  
OF THE 2015 GENERAL ASSEMBLY

Pursuant to Article 12D of Chapter 120 of the General Statutes, the Environmental Review Commission submits its report and recommendations to the 2016 Regular Session of the 2015 General Assembly.

Respectfully submitted,

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Senator Trudy Wade

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Representative Jimmy Dixon

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Rep. Chuck McGrady

Co-Chairs  
Environmental Review Commission

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# STATUTORY AUTHORITY

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## NORTH CAROLINA GENERAL STATUTES ARTICLE 12D.

### **Environmental Review Commission.**

#### **§ 120-70.41. Commission established.**

The Environmental Review Commission is hereby established.

#### **§ 120-70.42. Membership; cochaIRS; vacancies; quorum.**

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources or the equivalent committee, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of nine members.

#### **§ 120-70.43. Powers and duties.**

(a) The Environmental Review Commission shall have the following powers and duties:

- (1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:
  - a. Benefits of each program relative to costs;

- b. Achievement of program goals;
  - c. Use of measures by which the success or failure of a program can be measured; and
  - d. Conformity with legislative intent;
- (2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
- a. Improvements in administrative structure, practices, and procedures;
  - b. Increased integration and coordination of programs and functions;
  - c. Increased efficiency in budgeting and use of resources;
  - d. Efficient administration of licensing, permitting, and grant programs;
  - e. Prompt, effective response to environmental emergencies;
  - f. Opportunities for effective citizen participation; and
  - g. Broadening of career opportunities for professional staff;
- (3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
- a. Ways in which agencies may operate more efficiently and economically;
  - b. Ways in which agencies can provide better services to the State and to the people; and
  - c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;
- (4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;
- (5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;
- (6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it

deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.

(b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

- (1) Monitoring the implementation of Session Laws 1989, c. 727;
- (2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;
- (3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and
- (4) Recodification of the General Statutes relating to the environment and environmental agencies.

(c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

- (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
- (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
- (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
- (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
- (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
- (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
- (8),(9) Repealed by Session Laws 2001-474, s. 12.
- (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986,

Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;

- (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
- (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

**§ 120-70.44. Additional powers.**

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

**§ 120-70.45. Compensation and expenses of members.**

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

**§ 120-70.46. Staffing.**

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission.

**§ 120-70.47. Funding.**

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission.

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# COMMISSION MEMBERSHIP

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## ENVIRONMENTAL REVIEW COMMISSION

### 2015-2016 Membership

Pursuant to G.S. 120-70.42, the Environmental Review Commission consists of six members appointed by the President Pro Tempore of the Senate, six members appointed by the Speaker of the House of Representatives, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources.

#### **Co-Chairs**

Rep. Jimmy Dixon (Co-Chair)

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Rep. Chuck McGrady (Co-Chair)

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[Mike.Hager@ncleg.net](mailto:Mike.Hager@ncleg.net)

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#### **Ex Officio Members**

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[Andrew.Brock@ncleg.net](mailto:Andrew.Brock@ncleg.net)

**Commission Staff:**

[Jeff Hudson](#), Commission Counsel

[Jennifer McGinnis](#), Commission Counsel

[Jennifer Mundt](#), Commission Analyst

[Jeff Cherry](#), Commission Counsel

[Chris Saunders](#), Commission Counsel

[Layla Cummings](#), Commission Counsel

[Mariah Matheson](#), Commission Assistant

Commission Clerks: [Laura Bone](#), [Robert Mays](#), and [Michael Wiggins](#)

**Commission Contact Information:**

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## COMMISSION PROCEEDINGS

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The Environmental Review Commission met four times during the interim between the 2015 and the 2016 Regular Sessions of the General Assembly. The Commission's Charge can be found [here](#). The following is a brief summary of the Commission's proceedings. Detailed minutes and information from the Commission meeting are available in the Legislative Library and [online](#).

**Wednesday, January 13, 2016**

### AGENDA

**9:00 a.m.**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Chuck McGrady, presiding
2. Introductory remarks by Cochairs  
Representative Chuck McGrady  
Representative Jimmy Dixon  
Senator Trudy Wade
3. Report on the status of assessment, corrective action, prioritization, and closure for each coal combustion residuals surface impoundment as required by the Coal Ash Management Act of 2014 (G.S. 130A-309.204(a)).  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality
4. Interim report on activities to study and identify appropriate groundwater standards for hexavalent chromium and vanadium (Section 4.8A(b) of S.L. 2015-286).  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality
5. Report on activities to implement the audit privilege and limited immunity provisions of the Regulatory Reform Act of 2015 (Section 4.1(c) of S.L. 2015-286).  
John Evans, Chief Deputy Secretary  
Department of Environmental Quality

6. Establish a stakeholder group to conduct the following studies:  
The solid waste management study required by Section 14.21(a) of S.L. 2015-241.

The use of new technologies and strategies to dewater leachate and other forms of wastewater as required by Section 14.21(b) of S.L. 2015-241.

7. Commission discussion and announcements.

The first meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday January 13, 2016 at 9:00 a.m. in Room 643 of the Legislative Office Building. Representative Chuck McGrady presided.

Mr. Tom Reeder, Assistant Secretary, Department of Environmental Quality (DEQ), gave a report on the status of assessment, corrective action, prioritization, and closure for each coal combustion residuals surface impoundment as required by the [Coal Ash Management Act of 2014](#).

Mr. Reeder gave an overview of dry ash excavation operations, beneficial use of coal ash rulemaking, groundwater comprehensive site assessments and corrective action plans, survey of private and public water supply wells, decanting/dewatering seeps, and permitting, enforcement activities, and prioritization.

Mr. Reeder also discussed the interim report to study and identify appropriate groundwater standards for hexavalent chromium and vanadium, municipal drinking water standards, and public water sampling. Mr. Reeder noted that coal ash cannot be excavated until the U.S. Environmental Protection Agency (U.S. EPA) issues permits.

Dr. Megan Davies, Chief of the Epidemiology Section, Department of Health and Human Services (DHHS), commented on hexavalent chromium and vanadium. She noted that DHHS issued health recommendations, not regulations. DHHS was mandated by the Coal Ash Management Act (CAMA) to come up with health risk evaluations.

There was Commission discussion on drinking water standards for private water wells, naturally occurring contaminations, CAMA reporting dates, pollutants in bottled water, ground water standards for chromium, and diseases associated with vanadium,

The Commission discussed whether or not Duke Energy is required to pay for bottled if a well has been contaminated by coal ash. Mr. Reeder said that if DEQ determines a well is unsafe because of Duke Power, then Duke Power is required to pay for it. Duke Power is currently paying for bottled water in areas where there are exceedances.

There was Commission discussion on vanadium levels above DHHS standards. Mr. Reeder indicated that county health departments will work with well owners to filter out these constituents. Mr. Reeder noted that most municipal drinking water has some level



of vanadium in it, some of which may be naturally occurring. Municipal water systems are regulated by the federal [Safe Drinking Water Act](#).

Mr. John Evans, Chief Deputy Secretary, DEQ, reported on activities to implement the audit privilege and limited immunity provisions of the Regulatory Reform Act of 2015. Mr. Evans said that 25 states have regulatory audit provisions. North Carolina has had an audit policy since 1995. [The Regulatory Reform Act of 2015](#) enhanced the audit provision and closed a number of loopholes. The U.S. EPA has a policy providing for audits and self-disclosure.

The Commission discussed public disclosure of audits and audit protection. Mr. Evans said in order to have a robust policy resulting in increased environmental protection, there must be some privilege to the company that performs the audit. However, the limited privilege requires disclosure on a number of occasions. Mr. Evans said that a provision in the Regulatory Reform Act of 2015 defines what an audit is and prevents a "continuous audit."

Rep. McGrady discussed the establishment of the stakeholder working groups.

## **Wednesday, February 10, 2016**

### **AGENDA**

**9:00 a.m.**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Senator Trudy Wade, presiding
2. Introductory remarks by Cochairs  
Senator Trudy Wade  
Representative Chuck McGrady  
Representative Jimmy Dixon
3. Discussion of the disposal of solar panels  
Representative Jimmy Dixon

Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality

James McLawhorn, Director  
Electric Division, Public Staff, Utilities Commission

Maggie Clark, Interim Director of Government Affairs  
North Carolina Sustainable Energy Association

Ricky Sinha, Director of Sustainable Development  
First Solar

4. Discussion of whether post-construction stormwater management measures are necessary outside of certain areas  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality
5. Discussion of reduction or elimination of riparian buffer requirements for intermittent streams  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality
6. Discussion of nutrient management in reservoirs  
Falls Lake Rules  
Forrest R. Westall, Sr., Executive Director  
Upper Neuse River Basin Association  
  
Jim Wrenn,  
Representing the Stormwater Utility of Granville County, Person County,  
Town of Butner, Town of Stem, and City of Creedmoor  
  
Effectiveness of nutrient management measures in reservoirs  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality
7. Commission discussion and announcements
8. Adjourn

The second meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday February 10, 2016 at 9:00 a.m. in Room 643 of the Legislative Office Building. Sen. Trudy Wade presided.

Mr. Tom Reeder, Assistant Secretary, Department of Environmental Quality (DEQ); Mr. James McLawhorn, Director, Electric Division, Public Staff, Utilities Commission; Ms. Maggie Clark, Interim Director of Government Affairs, North Carolina Sustainable Energy Association; and Mr. Ricky Sinha, Director of Sustainable Development, First Solar, gave presentations on the disposal of solar panels.

Mr. Reeder discussed the growth of the solar industry in North Carolina, solar panel components, end-of-life decommissioning, and environmental and health impacts.

There was Commission discussion on the party responsible for solar decommissioning. Mr. Reeder said that North Carolina does not require a bond. The Utilities Commission is

the adjudicator. Commission members asked about local government authority, zoning, and land evaluation and restoration.

Mr. James McLawhorn discussed the role of the Public Staff of the Utilities Commission, Solar Certificate of Public Convenience and Necessity, the top 10 counties for installed solar capacity, and the interconnection queue process.

Ms. Maggie Clark gave a presentation on the current decommissioning processes, how solar decommissioning is set out in contracts, and quality control of solar panels manufactured by suppliers.

Mr. Ricky Sinha discussed the solar decommissioning process.

The Commission discussed the value of the materials on solar farms, the toxicity of the materials, the average life span of the solar panels, effects of a natural disaster on solar farms, [SEPA Reform \(HB 795\)](#), and solar farm recycling procedures.

Mr. Forrest R. Westall, Sr., Executive Director, Upper Neuse River Basin Association and Mr. Jim Wrenn, representing the stormwater utility of Granville County, Person County, Town of Butner, Town of Stem, and City of Creedmoor; discussed the nutrient management in Falls Lake.

Mr. Westall noted that Falls Lake supplies 500,000 people with drinking water. There was Commission discussion on the importance of buffers, nitrogen levels, and intermittent streams.

Mr. Tom Reeder, discussed the effectiveness of nutrient management measures in reservoirs.

The Commission discussed the Regulatory Reform Act of 2015 (HB. 765), a potential study for coastal stormwater, mitigation of streams that the federal government classifies as important, and fish kills.

Commission discussion was open to the public.

## **Wednesday, March 9, 2016**

### **AGENDA**

**9:00 a.m.**

Room 643 Legislative Office Building  
Raleigh, North Carolina

1. Call to order  
Representative Jimmy Dixon
2. Introductory remarks by Cochairs  
Representative Jimmy Dixon

Senator Trudy Wade  
Representative Chuck McGrady

3. Update on the work of the Working Group on Solid Waste Issues and Wastewater Technologies  
Senator Wade  
Representative Dixon  
Jennifer McGinnis, Commission Counsel
4. Report on the consolidation and elimination of outdated and unnecessary reports to the Environmental Review Commission  
Representative Dixon  
Layla Cummings, Commission Counsel
5. Update on activities related to groundwater standards for hexavalent chromium and vanadium  
Dr. Randall Williams, State Health Director and Deputy Secretary for Health Services, Department of Health and Human Services
6. Presentation on risk of flame retardants and discussion of legislative proposals to reduce the risk  
Representative Pricey Harrison  
Representative Chuck McGrady  
  
Heather Stapleton, PhD  
Environmental Science and Policy Division, Duke University  
  
Susan Inglis, Executive Director  
Sustainable Furnishings Council  
  
Dennis Ozment  
Minnesota State Representative, Retired  
Minneapolis Fire Captain, Retired
7. Discussion of wetland and stream mitigation issues  
Stream mitigation requirements  
Tom Reeder, Assistant Secretary for the Environment  
Department of Environmental Quality (DEQ)  
  
Ed Neil and Clay Neill  
Neill Grading & Construction, Inc.  
Hickory, North Carolina  
  
Chris Huysman  
Huysman and Bandy, Inc.  
Sparta, North Carolina

404 permitting program  
Tom Reeder, Assistant Secretary for the Environment  
DEQ

8. Discussion of third-party challenges of federal permits issued by DEQ  
Craig Bromby, Deputy General Counsel  
DEQ

9. Commission discussion and announcements

10. Adjourn

The third meeting of the Environmental Review Commission (ERC or Commission) was held on Wednesday March 9, 2016 at 9:00 a.m. in Room 643 of the Legislative Office Building. Representative Jimmy Dixon presided.

Ms. Jennifer McGinnis, Commission Counsel, gave an update on the work of the Working Group on Solid Waste Issues and Wastewater Technologies. The working group was authorized by the Commission to study information relevant to whether solid waste management activities in the State are being conducted in a manner most beneficial to the citizens of the State, particularly in terms of efficiency and cost-effectiveness; and the use of new technologies and strategies, including the use of integrated and mobile aerosolization systems, to dewater leachate and other forms of wastewater.

Ms. McGinnis reported the following: the Department of Environmental Quality (DEQ) gave an overview on issues related to waste disposal in the State; the School of Government gave an overview of local government authority to provide solid waste/recycling services and their authority to fund those services through taxes and fees. The working group received comments from local government representatives and the private industry.

Ms. Layla Cummings, Commission Counsel, gave a report on the consolidation and elimination of outdated and unnecessary reports to the Commission. There was Commission discussion on the reasoning behind report eliminations.

Dr. Randall Williams, State Health Director and Deputy Secretary for Health Services, Department of Health and Human Services (DHHS), gave an update on activities related to groundwater standards for hexavalent chromium and vanadium. Dr. Williams updated the ERC on DHHS' analysis of hexavalent chromium and vanadium effects on public health. For the last 10 months DHHS examined municipal water supplies and regulatory standards of hexavalent chromium and vanadium. California is the only state to regulate both hexavalent chromium and vanadium.

Commission members asked if hexavalent chromium and vanadium are carcinogens. Dr. Williams noted that both hexavalent chromium and vanadium are carcinogens based on

animal trials. Based on public health standards, DHHS set the standard at a level that would cause a one-in-a-million chance of causing cancer after consumption for 70 years. DHHS set a standard of 0.3 micrograms per liter of water.

DEQ announced on March 1, 2016 that it would change its groundwater standard for vanadium to 20 micrograms per litre of water from .3 micrograms. The U.S. Environmental Protection Agency (U.S. EPA) plans to weigh in on the health risk of hexavalent chromium and vanadium. In response DHHS lifted the drinking water restrictions on certain wells located near coal ash ponds.

Representative Pricey Harrison and Representative Chuck McGrady discussed a legislative proposal to reduce the risk of flame retardants and introduced the flame retardant panel.

Dr. Heather Stapleton, PhD, Environmental Science and Policy Division, Duke University, discussed flame retardant chemicals in consumer products and human exposure concerns. Dr. Stapleton discussed the regulations that govern the use of flame retardants and the types of products treated with flame retardants. Dr. Stapleton noted that polybrominated diphenyl ethers (PBDEs) are increasing in breast milk. Dr. Stapleton also discussed worldwide exposure trends and flame retardants in infant products,

Ms. Susan Inglis, Executive Director, Sustainable Furnishings Council, discussed the benefits of chemical free/green furnishings.

Mr. Dennis Ozment, Retired Minnesota State Representative, Retired Minneapolis Fire Captain, presented information on the dangers of fire retardants in home furnishings. Mr. Ozment said that the chemicals slowed down the fires, but caused an increase in smoke and toxicity. Firefighters are exposed during and after the fire and the toxicity is having an impact on them. Getting the chemicals reduced in the materials will make it safer for firefighters. The toxicity is absorbed through the skin into their bodies and it stays in their clothing. Cancer rates among firefighters is much higher than the average citizen.

Dr. Stapleton noted the phenomenon that domestic cats are coming down with rapid thyroidism due to flame retardants. PBDEs are significantly higher in cats that come down with hyper thyroidism. Thyroidism is the highest growing cancer in the U.S. We are trying to determine if flame retardants are a contributing factor to thyroid cancer.

There was Commission discussion on the dangers of flame retardants to the endocrine system, PBDEs in marine mammals, market viability of chemical free products, if PBDEs are in the drinking water, and potential litigation of non-flame retardant products.

The Commission received public comment on PBDEs.

Mr. Tom Reeder, Assistant Secretary for the Environment, DEQ, discussed stream mitigation requirements, including Army Corps of Engineers Districts, mitigation thresholds, [404 program](#) assumption, and the State programmatic general permit.

Mr. Ed Neil, Neill Grading & Construction, Inc., Hickory, North Carolina, discussed wetland and stream mitigation issues. Mr. Neil said stream mitigation is unnecessary unless it's a trout stream. He noted that the requirements do not take into consideration new technology and creates an unfair advantage in the State.

Mr. Chris Huysman, Huysman and Bandy, Inc., Sparta, North Carolina is a wetland consultant. Mr. Huysman explained the 404 process. Mr. Huysman said that the process is complicated. When his company fills in a stream, they use new technological standards in order to avoid the loss of habitat. Mr. Huysman said that there wasn't as much consideration for aquatic life in the 1990s. The review process doesn't address stream mitigation, just wetland mitigation. Mr. Huysman said the threshold can be moved from 300 feet. Impacts less than 300 feet are minimal.

There was Commission discussion on the different districts and their flexibility, mitigation in other states, differences in terrain, different wetland mitigation east or west of I-95, the Army Corps of Engineers permit process, and box culverts versus bridges.

Mr. Craig Bromby, Deputy General Counsel, DEQ, discussed third-party challenges of federal permits issued by DEQ.

The Commission discussed the Environmental Protection Agency's (U.S. EPA) position that North Carolina rules and statutes are not adequate to provide access to the courts. DEQ has responded in detail and is awaiting a response from the U.S. EPA.

There was Commission discussion on how North Carolina handles third-party challenges to federal permits and the Office of Administrative Hearings involvement and the Flint, Michigan water crisis. Mr. Reeder indicated that DEQ is aware of the Flint, Michigan crisis. Mr. Reeder noted that North Carolina's lead and copper requirements are more stringent than federal regulations.

Rep. McGrady and Sen. Bingham will cochair the flame retardant subcommittee.

## **April 13, 2016**

The fourth meeting of the Environmental Review Commission (ERC or Commission) was held on April 13, 2016 at 9:00 a.m. in Room 643 of the Legislative Office Building. Senator Trudy Wade presided. The Commission adopted this report.

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## WORKING GROUP PROCEEDINGS

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**The Solar Panel Disposal Working Group met three times:**

Wednesday, January 20, 2016 at 1:00 p.m. in Room 415 of the Legislative Office Building.

Meeting between Representative Dixon and the following stakeholders for a preliminary discussion of ideas for the disposal of solar panels:

- Solar Industry (names of stakeholders to be supplied by Betsy McKorkle).
- Duke Energy.
- Local Governments (League of Municipalities and Association of County Commissioners).
- Agriculture Interests (Farm Bureau, NC Grange, Department of Agriculture).
- Solid Waste Industry.

Tuesday, January 26, 2016 at 10:00 a.m. in the 5<sup>th</sup> Floor Research Division Conference Room of the Legislative Office Building.

Meeting between Representative Dixon and Department of Environmental Quality staff for a preliminary discussion of ideas for the disposal of solar panels

Wednesday, February 3, 2016 at 1:00 p.m. in Room 415 of the Legislative Office Building.

Meeting between Representative Dixon and stakeholders for further discussion of ideas for the disposal of solar panels.

**The Waste Work Group of the Environmental Review Commission met on February 10, 2016 on Wednesday at 1:30 p.m. in Room 423 of the Legislative Office Building in Raleigh, North Carolina.**

The meeting was called to order by Sen. Trudy Wade and Representative Jimmy Dixon.

There were presentations and discussion on the study directed pursuant to Sec. 14.21.(a) of [S.L. 2015-241](#), and specifically (to initiate the working group) information relevant to whether solid waste management activities in the State are being conducted in a manner most beneficial to the citizens of the State, particularly in terms of efficiency and cost-effectiveness.



Ms. Ellen Lorscheider, Chief of the Solid Waste Section, Department of Environmental Quality (DEQ) gave an overview of issues related to waste disposal in the State.

Ms. Kara Millonzi, Associate Professor of Public Law and Government, School of Government, The University of North Carolina at Chapel Hill, gave an overview of local government authority to provide solid waste/recycling services and their authority to fund those services through taxes and fees.

Ms. Erin Wynia, Legislative Counsel, League of Municipalities; Mr. Ron Hargrove, Director Winston-Salem/Forsyth County Utilities (on behalf of the League of Municipalities); Mr. Dan LaMontagne, Assistant County Manager and Solid Waste Director Chatham County (on behalf of the Association of County Commissioners); and Mr. Allen Hardison, representing the North Carolina Chapter of the Solid Waste Association of North America (NC SWANA), and the Coastal Regional Solid Waste Management Authority, gave a presentation from the local government perspective.

Mr. Phil Carter, Governmental Affairs Manager, Waste Industries, gave a presentation from the industry perspective.

There were presentations and discussion on the study directed pursuant to Sec. 14.21.(b) of [S.L. 2015-241](#), concerning the use of new technologies and strategies, including the use of integrated and mobile aerosolization systems, to dewater leachate and other forms of wastewater.

Ms. Ellen Lorscheider, Chief, Solid Waste Section, DEQ, gave an overview of currently approved technologies, and alternate technologies under review and associated issues.

Mr. Drew Isenhour, Area President, Mid Atlantic, Republic Services, gave an overview from the industry perspective.

**The Flame Retardants Working Group met on Thursday, March 31, 2016 at 9:30 a.m. in Room 415 of the Legislative Office Building.**

The Working Group discussed an overview of flame retardant legislation in the United States. According to Safer States, a network of environmental health coalitions and organizations in the states that promotes state and national policy to protect people and the environment from the impacts of the use of chemicals, 12 states have policies on the books addressing toxic flame retardants and presently 18 states have legislation pending. Most of these prohibitions on flame retardants have been in place for 10 years or more. Maryland, Minnesota, New York, and Vermont have enacted legislation specific to children's' exposure to certain toxic flame retardants.

The Working Group also discussed [House Bill 648](#), Prohibit Toxic Flame Retardants in Bedding and legislative proposal, "[DHHS/Develop State Chemical Action Plan](#)."

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## LEGISLATIVE PROPOSALS

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